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State v. Sowles Appellant's Brief Dckt. 43433

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43433
)	
v.)	ADA COUNTY NO. CR 2015-3106
)	
JAMES OSCAR SOWLES,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

James Sowles pled guilty to one count of failure to verify address as a violent sexual predator and was sentenced to a unified term of ten years, with three years fixed. He contends the district court abused its discretion by imposing an excessive sentence in light of the mitigating factors that exist in this case.

Statement of the Facts and Course of Proceedings

When he was eighteen years old, Mr. Sowles was convicted of robbery, attempted rape, burglary, petit theft, and aggravated assault. (Presentence Investigation Report ("PSI"), pp.5, 16.) He was incarcerated from 1987 to 2013, and

was released from prison at the age of forty-five. (PSI, pp.1, 16.) After he was released, Mr. Sowles had sex with a seventeen-year old girl. (PSI, pp.5, 16.) He left the State of Idaho, and failed to register as a sex offender or verify his address as a violent sexual predator, because he wanted to avoid being questioned by police. (PSI, pp.3-4.) He first went to California, and then to Massachusetts. (PSI, p.16.) He was arrested in Massachusetts in February 2015 and was extradited to Idaho. (PSI, pp.9, 16.)

Mr. Sowles was charged by complaint with one count of failure to register as a sex offender and one count of failure to verify address as a violent sexual predator. (R., pp.5-7.) He waived a preliminary hearing and was bound over to the district court. (R., p.18.) The State then filed an information charging Mr. Sowles with these same offenses. (R., pp.19-20.) Mr. Sowles pled guilty to one count of failure to verify address in exchange for dismissal of the failure to register count.¹ (R., pp.31, 41; Tr. 5/21/15, p.20, Ls.9-22.) The district court sentenced Mr. Sowles to a unified term of ten years, with three years fixed. (R., p.52.) A judgment of conviction was entered on July 20, 2015. (R., pp.51-55.) Mr. Sowles filed a timely notice of appeal. (R., pp.57-59.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Sowles a unified sentence of ten years, with three years fixed, in light of the mitigating factors that exist in this case?

¹ As part of the plea agreement, Mr. Sowles also agreed to plead guilty to two misdemeanor counts of battery in a related case involving the seventeen year-old girl. (R., p.40.)

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Sowles A Unified Sentence Of Ten Years, With Three Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Sowles asserts that, given any view of the facts, his unified sentence of ten years, with one and one-half years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the offense, the character of the offender and the protection of the public interest.’” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed upon Mr. Sowles by the district court was not reasonable. The first factor for this Court to independently examine is the nature of the offense. See *Miller*, 151 Idaho at 834. Mr. Sowles failed to register or verify his address after he left the State of Idaho. He pled guilty to one count of failure to verify address as a violent sexual predator, though it is not clear he was even aware of his obligation to register or verify his address. (Tr. 7/16/15, p.16, Ls.13-18.) He expressed remorse to the presentence investigator and, at sentencing, his counsel requested a rider and “a

chance at some treatment.” (PSI, p.14; Tr. 7/16/15, p.17, Ls.17-23.) A rider would have been a much more appropriate sentence considering the nature of the offense. It was certainly wrong of Mr. Sowles to fail to verify his address, but the circumstances of the crime do not warrant a unified sentence of ten years, with three years fixed.

The second factor for this Court to independently examine is the character of the offender. See *Miller*, 151 Idaho at 834. Mr. Sowles accidentally shot himself in the head with a gun at the age of five, and has suffered life-long deficits as a result. (PSI, pp.8, 16-17.) In fact, he was unable to undergo the GAIN-I assessment because of his cognitive impairment. (PSI, pp.13, 123.) As a child, Mr. Sowles was the victim of physical, sexual and emotional abuse from his father. (PSI, pp.8, 11, 16.) He was removed from his home at the age of twelve and has a sixth grade education. (PSI, pp.7, 10.) Mr. Sowles spent twenty-seven years in prison, arriving at the age of eighteen and leaving at the age of forty-five. (PSI, p.83.) During that period of time, he did not receive any treatment, and left prison without the knowledge or skills necessary for success. (PSI, p.83.) There is no indication that Mr. Sowles is beyond help and, on the contrary, it seems that sexual offender treatment on a rider would have been the appropriate sentence here. (PSI, p.15.)

The third factor for this Court to independently examine is the protection of the public interest. See *Miller*, 151 Idaho at 834. Mr. Sowles was determined to be moderately amenable to sexual offender treatment. (PSI, pp.15, 144.) It was recommended that he undergo substance abuse treatment in conjunction with sexual offender treatment. (PSI, p.119.) While there is no guarantee that these treatments would have been successful, they would have given Mr. Sowles the opportunity to

potentially become a protective member of society, without posing any threat to the public.

On the record presented, the district court abused its discretion when it imposed upon Mr. Sowles a sentence of ten years, with three years fixed, for the crime of failure to verify address as a violent sexual predator.

CONCLUSION

Mr. Sowles respectfully requests that the Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 18th day of November, 2015.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas